

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: ) 19-MD-2875(RBK-JS)  
)  
) Camden, NJ  
VALSARTAN NDMA PRODUCTS ) October 16, 2019  
LIABILITY LITIGATION ) 10:45 a.m.

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE JOEL SCHNEIDER  
UNITED STATES MAGISTRATE JUDGE

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I N D E X

THE COURT:

PAGE

Discusses order of proceedings

5

Search term lists

5

Macro discovery issues

6

ARGUMENT RE: TPP FACT SHEET:

PAGE

Ms. Lockard

7, 10, 17

Mr. Rivero

8, 15

The Court - Decision

18

ARGUMENT RE: DOCUMENT REQUEST #10:

PAGE

Ms. Lockard

19

Mr. Rivero

20

The Court - Decision

22

ARGUMENT RE: DEFENDANTS' FACT SHEET:

PAGE

Mr. Goldberg

23

The Court - Decision

24

COLLOQUY RE:

PAGE

Aurobindo 30(b)(6) deposition

26

Coordination of state court matters

27

Colloquy

4

1 THE COURT: We're on the record in In Re: Valsartan  
2 MDL, Docket 19-2875.

3 Can lead counsel for each side just enter your  
4 appearance for the record, and whoever speaks on the record,  
5 if you could just state your name so the transcript can be  
6 accurate.

7 MR. NIGH: Daniel Nigh for plaintiffs.

8 MR. SLATER: Good morning, Your Honor. Adam Slater  
9 on behalf of the plaintiffs.

10 MR. HONIK: Good morning, Your Honor. Ruben Honik,  
11 Golomb & Honik, for the plaintiffs.

12 MS. WHITELEY: Good morning, Your Honor. Conlee  
13 Whiteley, Canner & Whiteley, on behalf of the plaintiffs.

14 THE COURT: Defendants?

15 MR. GOLDBERG: Seth Goldberg on behalf of GHP and  
16 the joint defense groups.

17 MS. LOCKARD: Good morning, Your Honor. Victoria  
18 Lockard. I'm here on behalf of the Teva defendants and the  
19 defense -- joint defense groups.

20 THE COURT: Just for the benefit of the group, we  
21 were meeting downstairs informally to discuss some of the more  
22 problematic issues in the case. I thought it would be helpful  
23 to talk informally off the record. I hope we made progress,  
24 but I'm not sure, to be honest with you. But it is what it  
25 is.

Colloquy

5

1           What we're going to do is, we're going to go through  
2 the issues in the letters of the parties, address any issues  
3 that you'd like. We're going to take a break, come back at  
4 2:00. And in the interim, what we hope and expect is, the  
5 parties can meet regarding the search term and custodian  
6 issues, and then we'll see where we are after the break.

7           As far as this Court is concerned, I think we've  
8 done a great job organizing the case, getting all the  
9 administrative-type issues in order, and that phase of the  
10 case looks like it's going to be wrapped up pretty soon. But  
11 now we're getting into the nuts and bolts of the case, and  
12 it's this Court's feeling that if the search term and  
13 custodian lists aren't the most important discovery items in  
14 the case, they're certainly up there. So that's why so much  
15 time and effort I think needs to be dedicated to the custodian  
16 and search term lists, and that's what we focused on  
17 downstairs.

18           D-Day for those lists is December 11. We're going  
19 to finalize those lists at that conference, no matter where we  
20 are. You know my feeling about the lists. I think it's in  
21 defendants' best interest to be over-inclusive rather than  
22 under-inclusive. And if there's good cause to amend the lists  
23 after we finalize them, whether by adding or subtracting names  
24 and terms, we'll do it.

25           So why don't we put the custodian and -- and search

Colloquy

6

1 term issue aside for this morning and we'll do that last and  
2 go through the issues in the parties' letters. I have Mr. --  
3 I have both letters in front of me. I have Mr. Slater's  
4 letter here, so we'll go through the issues: ESI custodian,  
5 ESI search terms. We're going to save that for last.  
6 Plaintiffs' April discovery letter. I suppose that's wrapped  
7 up in the custodian and search term issue, so we'll save that  
8 for last.

9 Macro discovery issues. This is what we'll do on  
10 that topic. No later than Monday, I'm ordering -- I'm going  
11 to order the parties to give me their list of macro issues  
12 they want to address. Preferably it's a joint list, but it  
13 doesn't have to be. And then I'll enter an order identifying  
14 the issues that are going to be briefed and addressed.

15 If I enter the order Tuesday, it will be two weeks  
16 for the opening briefs, two weeks for the responding briefs.  
17 We should be able to get a decision on those issues before or  
18 at the November 20 meeting, which will be helpful for the  
19 parties to prepare for the December 11 conference.

20 As I said downstairs, I think a great example of  
21 what I consider a macro issue is the foreign regulatory  
22 discovery; are the plaintiffs going to be limited to discovery  
23 just related to the FDA or foreign regulatory bodies around  
24 the world. That's the type of issue we can brief and decide  
25 up front.

1 Another very good I think what I consider a macro  
2 issue would be the relevant time frame for each of the key  
3 defendants. Let's get that teed up and decided so we can make  
4 progress on the other aspects of the case.

5 So that order will be entered. If I can get those  
6 lists early enough on Monday, I'll enter the order on Monday.  
7 But, if not, no later than Tuesday.

8 Next issue, TPP fact sheet. Are there any issues to  
9 address?

10 MS. LOCKARD: Yes, Your Honor. Victoria Lockard.  
11 We have agreed on all but I think two. We're down to two  
12 issues now on the third parties' payer plan fact sheet, and we  
13 circulated to the Court yesterday a highlighted version of the  
14 current draft.

15 THE COURT: Got it.

16 MS. LOCKARD: There are -- the one issue I think  
17 we're going to be able to resolve relates to the document  
18 requests. We had asked for documents related to alternative  
19 hypertension medications, and I think we've agreed with  
20 plaintiffs' counsel that we'll come up with a joint list and  
21 which we should be able to resolve that.

22 For the two remaining issues, one pertains to who  
23 needs to respond to the plaintiff fact sheet, and whether or  
24 not all of the assignors need to respond or just the three  
25 assignors who are listed in the master complaint.

1 And so let me tell you what I mean by that. So  
2 there were three health care benefit assignors listed in the  
3 TPP master complaint. I think it's --

4 THE COURT: Are they named class reps?

5 MS. LOCKARD: The class rep is -- is not the -- it's  
6 not the same as the assignors.

7 MR. RIVERO: Judge, may I --

8 MS. LOCKARD: Yeah.

9 MR. RIVERO: I didn't want to interrupt. If I can  
10 explain. Andres Rivero, Your Honor, for MSP series, which is  
11 the class representative that we're talking about, the --the  
12 lead class representative for the TPPs.

13 Judge, the -- as you may have heard at a prior  
14 conference where we discussed it, MSP's business is to take  
15 assignment of third party payer claims. In this case, it has  
16 named three of its assignors, SummaCare, ConnectiCare, and  
17 Ambu. (7:43) There are 62 other assignors from which it has  
18 purchased claims.

19 THE COURT: Are those the three biggest?

20 MR. RIVERO: Those are -- those represent almost 62  
21 percent of all the claims that we have, all the number of  
22 members and by dollars.

23 THE COURT: So --

24 MR. RIVERO: So they're by far the three biggest.

25 THE COURT: Okay. So MSP is the named class rep.



1 There's 62 assignors, three of which have been identified.

2 Are there any other named class reps besides MSP?

3 MR. RIVERO: There is, Judge. There is MADA, Maine  
4 Auto Dealers Association represented by other counsel. So our  
5 TPP class reps in this case are MSP, which has assignments  
6 from 65 entities, tens of thousands of members, tens of  
7 millions of dollars, and there's also MADA, which has its own  
8 members and claims.

9 To go to what was being represented -- referred to  
10 by counsel, on this specific issue what we've said is, we'll  
11 give you the names of all the assignors, 65 of them. But  
12 they're -- the three that we've named in the complaint with --  
13 with just a very few number of representative examples,  
14 represent both by dollars and by number of members  
15 approximately 62 percent of the total amount.

16 So, Judge, even at that, even at 62 percent, we're  
17 talking about tens of thousands of members and tens of  
18 millions of dollars of claims. For this purpose, Judge, we're  
19 not doing a claims process, this -- by the way, the fact sheet  
20 requires us to identify things like for each assignor, every  
21 member. You know, there's these three that has 62 percent.  
22 Each member, the total cost to recipient, to member, total  
23 cost to the insurer, to the assignor. The kind of business  
24 that the member was -- belonged to.

25 All this kind of data for tens of thousands of

1 people, we're going to supply the specific detail for 62  
2 percent of all the people that would be our directly  
3 represented claims. Judge, I think for every legitimate  
4 defense purpose, to have that information for tens of  
5 thousands of people is adequate --

6 THE COURT: So are you saying that you would  
7 propose, and we'll hear from the defendants obviously, you  
8 would propose that only MSP and MADA answer the fact sheet.  
9 For MSP, they'll answer it for the three that make up 62  
10 percent? That's --

11 MR. RIVERO: That's exactly --

12 THE COURT: -- that's your position.

13 MR. RIVERO: That's exactly right, Judge.

14 THE COURT: And what about MADA, are they in a  
15 similar position to you?

16 MR. RIVERO: MADA -- no, MADA is direct -- has the  
17 members directly simply answer for itself. It'll -- it'll  
18 answer --

19 THE COURT: All right. So let's hear from -- from  
20 defendants. And I guess what I would be most interested in  
21 knowing is how much information do you need for class  
22 certification purposes.

23 MS. LOCKARD: Well, yes, and that's a fair question.  
24 Now keep in mind that these 65 assignors, they have this  
25 information for these assignors. They have it. They have it

1 available.

2 THE COURT: What do you need it for at this stage of  
3 the case?

4 MS. LOCKARD: Because it is representative of the  
5 class. It is not the entire class. It is representative of  
6 the class. And whereas they want to give us three assignors,  
7 which only makes up roughly 61 percent, is what we were told  
8 in the information, they have 100 percent of the information  
9 for 65 of these. They can essentially generate a report for  
10 each of the members in these benefit plans to provide this  
11 information. It's not overwhelming. It is helpful for class  
12 certification purposes.

13 THE COURT: Tell me how. Tell me how it's -- how --  
14 how and why you need it -- you need 100 percent for class  
15 certification purposes as opposed to 61 or 62 percent.

16 MS. LOCKARD: Well, we -- it's a very small  
17 percentage of the overall class. It's a very -- it's not 62  
18 percent of the overall class, it's 62 percent of the  
19 information they have. It includes --

20 THE COURT: Of one of the named class reps.

21 MS. LOCKARD: For one -- for just one of the named  
22 class reps, --

23 THE COURT: Okay.

24 MS. LOCKARD: -- not even MADA.

25 THE COURT: Okay. So help me understand why you

1 need it. There's two named class reps for this TPP class.  
2 Apparently, we don't have an issue with MADA, so let's deal  
3 with MSP. You know, it's their burden to show they're an  
4 adequate class rep, typicality, et cetera, et cetera. Tell me  
5 why you need 100 percent of the information from MSP as  
6 opposed to 61 percent.

7 MS. LOCKARD: Well, for one thing, we need that  
8 information to evaluate standing. In many of these cases that  
9 are filed around the country by MSP, there is and has been a  
10 finding that they lack standing to represent some of these  
11 assignors.

12 THE COURT: So if you got information for three  
13 assignors, would that not be enough to address the standing  
14 issue, or do you have to address each of the 62 assignments  
15 for standing purposes?

16 MS. LOCKARD: For standing to represent those three,  
17 we do. We need that information for standing, for them to  
18 represent and -- and represent to the Court that they have  
19 adequate assignments for those three, as well as the -- the  
20 entire 65. I mean that is an important threshold issue for  
21 this class certification process. And if they can't establish  
22 that they even have an appropriate assignment for what is, you  
23 know, they're saying 61 percent, we're talking about 49  
24 percent of whom they say they represent. They haven't --

25 THE COURT: No, your math -- math is a little wrong.

1 39.

2 MS. LOCKARD: Excuse me, I misspoke. 39 percent.  
3 They can't even show us that they have standing --

4 THE COURT: Counsel, sit down. Let me hear from  
5 defendant.

6 UNIDENTIFIED COUNSEL: I'm sorry, Judge.

7 MS. LOCKARD: You know, we need to evaluate the  
8 information in terms of, you know, are -- is this claim  
9 typical; you know, are they -- you know, is it a  
10 representative, you know, subset of the entire class. By just  
11 looking at three, they said there were 65 total assignors,  
12 they're offering us only three of 65, so I can't -- you know,  
13 that's not significant enough for us to be able to tell if it  
14 is a representative segment. Three out of 65.

15 So they have the information; it's not burdensome.  
16 You know, we're talking about responding on behalf of 65  
17 assignors in this class action. They have the information.  
18 They've told us they have the information. It's available and  
19 -- and it is relevant for us in order to assess the class  
20 certification issues.

21 THE COURT: The fact sheet itself, it's going to be  
22 answered by MSP, right?

23 MS. LOCKARD: It is going to be answered by MSP and  
24 MADA, but it contains information and documents that we have  
25 requested with respect to each assignor.

1           THE COURT: Okay. And point me to where in this  
2 fact sheet it would have a material impact on -- this --  
3 whether it's three or 62 that -- assignors that have to --  
4 information has to be provided for. Which questions?

5           MS. LOCKARD: Well, this -- I mean this requested  
6 information related to the pricing and financial aspects of  
7 the claim. I'm not sure I understand the Court's question.  
8 But, you know, for example the document demands talk about,  
9 you know, how much did the -- the benefit providers or the  
10 assignors pay for the drugs. You know, what sort of discounts  
11 or rebates would have been involved. So, you know, just  
12 evaluating three of 65 assignors doesn't give us the complete  
13 picture in order to determine if MSP, the class rep, is an  
14 adequate class rep.

15           UNIDENTIFIED COUNSEL: Your Honor, if I may?

16           THE COURT: Of course.

17           UNIDENTIFIED COUNSEL: And I -- I have not been  
18 involved in this issue, but if there are differences in many  
19 of these assignments in terms of prices paid, discounts, et  
20 cetera, if there are qualitative differences in how they are  
21 administering the benefits, how they are paying for drugs,  
22 then you may have ascertainability issues. You may have a  
23 problem with predominance because there may not be a cohesive  
24 class. There may be differences among the class members such  
25 that they can't establish class certification.

1           It may also bear on whether they can even establish  
2   a uniform model of damages. And we would certainly need that  
3   information to be able to say they can't. And I think that's  
4   the -- that's where we are with respect to the class  
5   certification issues as to ascertainability, class  
6   cohesiveness, and predominance.

7           THE COURT: Counsel for MSP?

8           MR. RIVERO: Judge, unfortunately, neither counsel  
9   was involved in the good faith conference, so I think there's  
10   a misunderstanding. What we offered was specifically to give  
11   the identities of all 65 assignors. The one thing that's been  
12   pointed out today that could go to class certification is the  
13   standing question.

14          Now, Judge, without -- it's premature to debate it,  
15   but the issue -- the standing issue, and I would like to put  
16   this to rest, that's come up for MSP, and I represent them in  
17   a number of class actions nationwide, is in the context of the  
18   Medicare Secondary Payer Act. That has absolutely nothing to  
19   do with our standing here. But nonetheless if they want to  
20   see our assignments, I'll identify all 65. If they want to  
21   see 65 assignments, that's not an issue. So we can put that  
22   to rest. That had not been raised in the good faith  
23   conference, but we can supply the assignments.

24          What we're saying though is, as to the detail that's  
25   called for in the TPP fact sheet -- and, Judge, it's really a

1 chart which I believe is at three --

2 THE COURT: Is this -- is this the chart on page 4?

3 MR. RIVERO: Yeah, it's section three, page 4,  
4 Judge.

5 THE COURT: Right.

6 MR. RIVERO: As to that chart, there's nothing on  
7 that chart that getting tens of thousands -- and it was broken  
8 down and I -- by the way, we agreed on 98 percent of this TPP  
9 fact sheet and I was personally on this good faith conference  
10 on Tuesday when it was brought home. So I'm very familiar.

11 This chart was broken down with one of the  
12 colleagues for these counsel so that the member ID number  
13 isn't part of the greater chart, because there's a recognition  
14 that the member IDs would involve tens of thousands of  
15 individuals and they didn't need all these categories.

16 So actually the way the chart was structured by  
17 agreement with counsel entirely runs against what was just  
18 argued. If that were the case, what they're saying, that they  
19 needed it by each member, then the member number would be in  
20 the larger chart. This (inaudible) question because that's  
21 where the cost to recipient, cost to insurer factor comes in.

22 THE COURT: Judge, what we're saying is, we'll  
23 provide all 65 assignors' identities, provide the assignments.  
24 But as to the breakdown for the tens and tens of thousands of  
25 members, specifically on each person, to break all that down



1 -- and it's not as simple as it sounds. We have a very good  
2 data system, but this is going to take significant work. For  
3 those -- those that MSP has named as a representative example,  
4 MSP is the class representative, they cover 62 percent of the  
5 members, we would provide all the data, all the called for  
6 information as to those.

7 THE COURT: So question III(a)(1), you would provide  
8 responsive information for these three that comprise 61 or 62  
9 percent?

10 MR. RIVERO: Yes, Judge. And just by the way to  
11 give an idea of the burdensomeness, of course, each category  
12 there, which, you know, things like identifying the type of  
13 business, something specifically requested from them, it  
14 involves work separate from the kind of data that's normally  
15 maintained. So you have to go back now and find what type of  
16 business each member belonged to. It's not -- it's not just  
17 push a button.

18 So, Judge, what I'm saying is, for -- I'm beating a  
19 dead horse, but for class purposes, the standing they  
20 specifically identified, we will address and we're providing  
21 tens of thousands of individual members' information.

22 THE COURT: Last word.

23 MS. LOCKARD: Your Honor, they have to have -- as  
24 you've said repeatedly, you know, they have to have some stake  
25 in this.

1 THE COURT: Skin in the game.

2 MS. LOCKARD: Skin in the game. They have this  
3 information for 65 of their assignor clients. And, you know,  
4 if there are certain issues that are overly burdensome and --  
5 and don't produce, you know, significant relevance, such as,  
6 you know, we'll call them the type of business for the 65,  
7 we're willing to yield here or there. But by and large, we're  
8 giving them a pass on, you know -- you know, 62 of their  
9 assignors, which -- which they can readily produce this  
10 information to us.

11 THE COURT: The Court's ruling is that it agrees  
12 with MSP. For present purposes, MSP and MADA will answer the  
13 TPP fact sheet; that MSP shall answer question III(a)(1) for  
14 the three assignors who make up 61 or 62 percent of their  
15 claim. They shall provide the identities of all 65 assignors,  
16 and if requested by defendants, give the assignments for all  
17 65.

18 All of this is without prejudice, after the  
19 defendants receive this responsive information, to make an  
20 application to the Court for more fulsome information, if you  
21 genuinely need it for class certification purposes. If you  
22 can make a case after you receive this information that you  
23 legitimately need it because it's relevant to class  
24 certification, you'll get it. So we'll take it one step at a  
25 time.

1 MS. LOCKARD: Okay. I understand Your Honor's  
2 ruling. Thank you.

3 The only other issue I think we need to raise for  
4 the Court relates to one of the document requests, and it's  
5 actually -- I believe it's on page 11. But it's document  
6 request number nine. Actually, document request number 10.  
7 And we had requested all contracts between you, meaning the  
8 assignors, and any pharmacy or pharmacy benefit manager  
9 related to any actual or potential claims asserted by you in a  
10 litigation.

11 So essentially what this is, is so the third party  
12 payers' contract with these pharmacy benefit managers, the PP  
13 -- PPNs, with respect to the drugs that are being provided  
14 under the benefits plan. And these agreements, as we  
15 understand, would include things like rebates and discounts.  
16 And that really contains the information that we need to put  
17 together a true picture of the pricing that relates to the  
18 drugs that were sold --

19 THE COURT: I didn't -- I didn't -- maybe I'm  
20 reading it wrong, I thought this request was getting at any  
21 type of indemnification agreement between, you know, the  
22 different entities. Am I reading it wrong?

23 MS. LOCKARD: That is not exactly what number 10 is  
24 asking. So number 10 is asking specifically for contracts  
25 with pharmacy benefit managers. So those are --

1 THE COURT: But it says related to any actual or  
2 potential claims asserted by you in this litigation. That's  
3 why my initial impression is you're asking for indemnification  
4 agreements.

5 MS. LOCKARD: Well, it's -- it's not indemnification  
6 agreements. It's related to, you know, the pharmacy benefit  
7 managers will be managing the pharmacy benefits that are the  
8 subject of the litigation, that are the subject of the clients  
9 in the litigation.

10 THE COURT: So let's -- let's take it with the  
11 Court's prior ruling. We have the three assignors. Do you  
12 just want the contracts between the three assignors and the  
13 PBMs?

14 MS. LOCKARD: At this point, given the Court's prior  
15 ruling, yes.

16 THE COURT: Any objection?

17 MR. RIVERO: Judge, my -- we had a very good  
18 discussion about this and it's a close question. But here's  
19 the issue, and -- and it comes down to this. The discussion  
20 with counsel was whether we put it under -- the entire  
21 agreement under the highest level of protection we can have,  
22 or whether -- our request was, and this -- this is the --  
23 these were the only two things we couldn't agree with from our  
24 recent conversations. Our ask was, would they allow us,  
25 because all of our clients are competitors with each other as

1 to these PBM agreements, in other words, each one strikes its  
2 own deals with its own ones, could we supply -- redact and  
3 supply only those aspects of the contacts that deal with cost,  
4 rebate, indemnity. Anything that would affect the price,  
5 would they take that. Because I understood that was what  
6 their desire was.

7 So my ask is simply, can I produce the contract  
8 redacting out aspects that don't have to do with cost?

9 THE COURT: Has the defendant objected to that?

10 MR. RIVERO: They -- they said that they needed to  
11 bring it to you.

12 THE COURT: And suppose we classify these contracts  
13 as attorney's eyes only, is there an objection?

14 MR. RIVERO: Judge, that was -- look, it's a close  
15 question and that would be my alternative, and I'm not saying  
16 it's unacceptable, but we would prefer, because of commercial  
17 sensitivity between our clients, our clients' assignors, to  
18 have it, you know, totally not produced, et cetera.

19 THE COURT: You don't want the 65 to see each  
20 others.

21 MR. RIVERO: Yeah.

22 THE COURT: So how is that a problem if it's  
23 attorney's eyes only?

24 MR. RIVERO: Well, Judge, I'm not saying -- I'm just  
25 saying -- I'm being ultra cautious and I'm not saying it's --

1 it's unacceptable, Judge.

2 THE COURT: Can you live with that?

3 MS. LOCKARD: We can, and I think that was our  
4 proposal.

5 THE COURT: Okay. So the question is, the documents  
6 will be provided for the three assignors that have been or  
7 will be identified. The documents shall be designated as, for  
8 the time being, attorney's eyes only and as always it's  
9 without prejudice. If for some reason you want to make an  
10 application, defendant, to reduce the level of  
11 confidentiality, we'll -- we'll consider that issue.

12 MS. LOCKARD: Sure. Thank you. Those are the only  
13 issues on the fact sheet.

14 THE COURT: Okay, great. So within the next week or  
15 so, you can get the final version to the Court and we'll enter  
16 the order.

17 MS. LOCKARD: Correct. We can do that by Monday.

18 THE COURT: Will that -- will that complete all the  
19 fact sheets in the case?

20 MS. LOCKARD: It does.

21 THE COURT: Fantastic.

22 MS. LOCKARD: At long last.

23 THE COURT: Fantastic.

24 MS. LOCKARD: Thank you.

25 THE COURT: Okay. Oh, no, it won't. The defendant

1 fact sheet, which is the next issue. I guess the ball is in  
2 whose court?

3 MR. GOLDBERG: The ball is now in defendants' court.  
4 We received their revisions on Saturday and, you know, we'll  
5 all make an effort to evaluate their proposed changes and get  
6 back with them.

7 THE COURT: Okay. So the next time we are scheduled  
8 to talk is November 6 on a phone call. Is there a chance it  
9 will be finalized by then, realistically?

10 MR. GOLDBERG: I don't know if it will be finalized,  
11 but we'll certainly make some headway --

12 THE COURT: All right.

13 MR. GOLDBERG: -- on getting to some narrower  
14 issues.

15 THE COURT: All right. No later than November 20.  
16 We have to finalize this fact sheet; we've got to get it done.  
17 Let's just get it out of the way. Okay.

18 Is there -- so you're going to get back to  
19 plaintiffs when, Mr. Goldberg?

20 MR. GOLDBERG: We can -- we can try to get back to  
21 them at some point in the next week so that we can get  
22 something done before November 6th.

23 UNIDENTIFIED COUNSEL: I would think that we should  
24 be able to start talking in less than -- by the end of next  
25 week, because then we're going to -- we're going to condense

1 the time.

2 MR. GOLDBERG: Well --

3 THE COURT: So how about October 23rd, get back to  
4 the plaintiffs. That's a week from today. By October 23rd,  
5 defendants shall respond to plaintiffs' comments on the  
6 proposed defendant fact sheet. And we'll discuss it on the  
7 November 6th call, but the absolute outside date to finalize  
8 it is November 20. And this way we'll get all the fact sheets  
9 done and get that out of the way.

10 The document request responses, I guess you just got  
11 that yesterday, plaintiffs. All right. So that will help I  
12 think identify issues that you will want to raise in your  
13 letter on Monday. You have an idea of the defendants'  
14 objections. I'm hoping you did -- I haven't seen it, but I'm  
15 hoping you didn't get, you know, boilerplate, it's too  
16 burdensome, privilege, disproportional, et cetera, et cetera.

17 UNIDENTIFIED COUNSEL: That's what we got. We got  
18 preliminary statements, general objections, which I don't  
19 think either of those actually are authorized under any rules  
20 I've ever seen.

21 THE COURT: Didn't I say something about that Rule  
22 26(g), you know, boilerplate objections are in violation of  
23 Rule 26(g)?

24 UNIDENTIFIED COUNSEL: I think so.

25 THE COURT: We'll deal with that. Completely



1 unacceptable.

2 UNIDENTIFIED COUNSEL: And then I think --

3 THE COURT: But I haven't seen them. I don't know  
4 if they're boilerplate or not, but if they're boilerplate and  
5 there's, you know, a simple assertion that it's too burdensome  
6 without supporting facts, no good.

7 UNIDENTIFIED COUNSEL: From my -- my group, we've  
8 been looking at these. We have -- I don't think we found a  
9 request that a defendant thought was not objectionable, which  
10 could be on us. I guess we'll find out. But it's -- we're  
11 hopeful that -- that there will be -- that --

12 THE COURT: A fulsome meet and confer.

13 UNIDENTIFIED COUNSEL: That we'll be able to cut to  
14 some good, productive positions quickly, we hope.

15 THE COURT: Okay. Well, I'm sure the defendants  
16 have read my numerous opinions on boilerplate objections and  
17 burdensomeness objections without supporting facts. And we  
18 know rule amendments from, what, two, three years ago say that  
19 if you're going to object on the grounds of privilege and say  
20 we'll produce responsive documents, you have to identify  
21 whether any documents are withheld on the grounds of  
22 privilege. The Court insists that privilege logs be produced.  
23 So all I'm saying is, the Court and both sides have to comply  
24 with the rules. No more, no less.

25 Okay. So we'll wait to hear from that and you have

1 that.

2 The 30(b)(6) deposition directed to Aurobindo.

3 Hopefully, we have good news on that?

4 UNIDENTIFIED COUNSEL: Yes, Your Honor. Our  
5 understanding is that as to core discovery, there's no issue  
6 anymore. Whatever the foreign entity has that's responsive is  
7 being produced. We don't have the same comfort with regard to  
8 the -- the document request that we were just talking about.

9 THE COURT: That's a different issue.

10 UNIDENTIFIED COUNSEL: It's a different issue and,  
11 you know, we're satisfied that for the time being, we're  
12 hopeful that they will come around on that or they'll get  
13 served. Although it looks like they're probably not going to  
14 get served until early next year, from what I was told last  
15 night because it apparently takes like 10 months or something  
16 and the process started in April or May. So we're -- we have  
17 some concern, but for the time being, we're not -- we're not  
18 going to with prejudice abdicate the right to take these  
19 depositions, if -- if there's a problem with getting the  
20 documents that we've just requested.

21 THE COURT: Is Aurobindo here?

22 MS. HEINZ: Yes, Your Honor. Jessica Heinz.

23 THE COURT: Kudos to you for working out the core  
24 document issue. With regard to the document requests, that's  
25 a completely different issue. We may have to wait for service

Colloquy

27

1 on that one. But I'm glad to see we hopefully have put the  
2 30(b)(6) issue aside for at least the moment.

3 MS. HEINZ: Thank you.

4 THE COURT: Thank you. Okay. Last issue before we  
5 get to the search term custodians, coordination of state court  
6 matters. I thought that was taken care of.

7 MR. GOLDBERG: So there are a couple of different  
8 issues and really it's in particular to New Jersey cases. We  
9 have three cases that are currently before Judge Happas, Reno  
10 (phonetic), Orlowski (phonetic) and Robertson (phonetic), and  
11 earlier in the summer I think Judge Kugler reached out to  
12 Judge Happas --

13 THE COURT: Right.

14 MR. GOLDBERG: -- and she agreed that there would be  
15 some --

16 THE COURT: Right.

17 MR. GOLDBERG: -- later coordination, and she put  
18 those matters in abeyance.

19 We are going to have a conference with her next  
20 Wednesday, October 22nd -- next Tuesday. And she's going to  
21 ask the question, should we hold these matters in abeyance?  
22 She had conditioned the abeyance on the possibility that the  
23 plaintiffs in those cases would be applying for MCL in New  
24 Jersey.

25 They have not done that because there have been no

1 more New Jersey cases filed. So she may be of the view that  
2 those cases that are before her now are the cases that are  
3 before her and, you know, she may be of the view that they  
4 should start the proceedings in those cases. We obviously --

5 THE COURT: What can they do in those cases that we  
6 -- we're not doing here?

7 MR. GOLDBERG: Well, right. I mean so -- so  
8 obviously we think that should be something that should be  
9 coordinated.

10 In addition, Mr. Slater is representing a plaintiff  
11 in a case on Graham (phonetic). That case is not -- has not  
12 been consolidated with those other cases. There is a  
13 responsive pleading due in Graham --

14 THE COURT: A different judge?

15 MR. GOLDBERG: Not a different judge.

16 THE COURT: Before Judge Happas?

17 MR. GOLDBERG: Yes, I believe so.

18 MR. SLATER: Judge, it's a -- it's a case that was  
19 filed and it would be assigned to whichever judge is on the  
20 wheel in Middlesex. All of these cases went by the wheel to  
21 individual judges. Judge Happas is the presiding judge, so  
22 that's why she was involved with this.

23 No answers have been filed to the case that I had  
24 filed. And I've told Mr. Goldberg, I'm not sure what the  
25 concern is because whether Judge Happas decides -- and I

1 wasn't at the conference because my case wasn't even filed  
2 then, but there was some reticence to -- just a consolidation,  
3 you know, the normal consolidation rule, which I would think  
4 would apply.

5 But I wasn't at the meeting, so I don't know why  
6 that didn't happen. I think it's because somebody might have  
7 suggested an MCL application was imminent, which it wasn't.  
8 But I've told Mr. Goldberg, I'm certainly not standing here  
9 today and then going into Middlesex and saying I want  
10 depositions in 30 days of this person and that person. It  
11 probably isn't good politically. And then the other thing is,  
12 I'm not doing that.

13 I've agreed to use the fact sheets that we come up  
14 with here. I've agreed to be bound by the discovery that we  
15 take here. So there's certainly no push from my perspective  
16 to try to do something that's beyond what happens here. There  
17 was some agreement that was written up and was circulated with  
18 the other lawyers. I was very uncomfortable with that. It  
19 was -- that I would never sign, but it's not necessary.

20 So I'm not going to be -- my case isn't before any  
21 judge yet because there's no responsive pleading. It's not  
22 joined yet. But I can tell you the other firm I think is a  
23 PSE member acting as local counsel, and I'm not sure what  
24 their concern is, unless, you know, the courts in Middlesex  
25 say we're going to start doing something. But we're going to

1     abide by what this Court rules and we're going to agree to be  
2     bound by the same discovery and the same fact sheets.

3             THE COURT: I know when those issues come up with  
4     these types of cases, we would normally consolidate the cases  
5     for discovery and case management purposes only and not  
6     consolidate it for trial. I don't know if they do that in  
7     state court. It sounds -- it sounds to me, Mr. Goldberg, that  
8     this is all going to be worked out.

9             MR. GOLDBERG: Yeah, I think the issue is whether  
10    Judge Happas decides that, you know, she has a different view  
11    and wants to proceed in some way. Certainly as we did before,  
12    we would -- we would -- we wanted to raise this.

13            We wanted to remind the Court that we are going to  
14    be before her next week, that the MCL that was supposed to be  
15    filed wasn't, so Judge Happas may -- may have the question,  
16    should I continue to hold these in abeyance or not; what's  
17    going to happen with the MDL.

18            We'll certainly encourage her that these matters and  
19    the Graham matter should be consolidated and we can enter some  
20    kind of consolidation order. We would certainly let her know  
21    that there doesn't seem to be any opposition to that from the  
22    MDL court. But if there's some way to enter into some kind of  
23    formal joint coordination order, or if Your Honor or Judge  
24    Kugler wants to reach back out to Judge Happas in advance of  
25    the meeting next week, we wanted to alert the Court.

Colloquy

31

1 THE COURT: I appreciate that. Let us -- you know  
2 what, let us know if there's a problem. I just can't conceive  
3 that Judge Happas would go off on her own on cases of this  
4 complexity. And if there is a problem, I have no doubt that  
5 Judge Kugler will pick up the phone and talk to Judge Happas.

6 MR. GOLDBERG: Thank you.

7 THE COURT: So let -- let us just know if there's a  
8 problem. I don't -- it doesn't sound like there will be.

9 MR. SLATER: Your Honor, I have one question  
10 actually that maybe Mr. Goldberg can answer. I know that the  
11 two Cook County cases are listed, too. They probably have  
12 more knowledge about what's happening in those cases than we  
13 have. We're just curious if there's any development in those  
14 cases.

15 MR. GOLDBERG: I -- you know, I don't know -- I  
16 don't know the status. I think both are right now being held  
17 in -- I don't know if there's a formal abeyance order.  
18 They're not proceeding at the moment. But I can report back  
19 to the Court on that, if Your Honor would like to.

20 THE COURT: Let us know if there's a problem.  
21 Is the MDL application on an agenda for the next  
22 meeting?

23 UNIDENTIFIED COUNSEL: Of the JPML?

24 THE COURT: Yeah, JPML. I'm sorry.

25 UNIDENTIFIED COUNSEL: I haven't seen the list this

1 past week, but I think it's premature even at this hour to  
2 know if it's going to be formally picked up in December. The  
3 JPML is likely to do so. Whether it permits oral argument  
4 remains to be seen. But as we sit here today, unless David  
5 tells me otherwise, I don't -- I don't think it's been picked  
6 up one way or the other.

7 THE COURT: Is there still a dispute about an  
8 objection to the application?

9 UNIDENTIFIED COUNSEL: I think there is an objection  
10 of record, yes.

11 THE COURT: Is it just to the definition that  
12 plaintiff used or in concept to expanding the definition?

13 UNIDENTIFIED COUNSEL: I think it's the latter, but  
14 maybe Mr. Goldberg can address it.

15 MR. GOLDBERG: Your Honor may -- may recall, and we  
16 certainly put this in the material we submitted to the Court  
17 in September, the JPML application that plaintiffs filed asks  
18 for a number of different things by way of expansion. It  
19 asked to expand the MDL to include not just Losartan and  
20 Irbesartan, of which there are only about 10 cases, but to  
21 include all of the eight ARB drugs, even though none of the  
22 other five are the subject of any recall.

23 So we -- we took issue with the five being added.  
24 We also took issue with the Irbesartan and Losartan cases  
25 being added because the numbers are really not materially



1 different today than it was back in January. There were two  
2 cases then and the JPML heard it, and there are only 10 cases  
3 now. So we -- we had to stay consistent with that view. And  
4 then on top of that, plaintiffs sought to expand the MDL for  
5 all eight of these drugs as to any carcinogenic contaminant.  
6 That's their phrase, any carcinogenic contaminant, when here  
7 we're dealing with a few very specific impurities. And so for  
8 that reason, we also felt like it was reasonable to file an  
9 objection.

10 THE COURT: Thank you. One other issue. The  
11 motions for extensions of time that came in from that Kentucky  
12 counsel, hopefully that can be worked out without the Court  
13 needing to address 30 or 35 or 40 motions for extensions of  
14 time. I -- I don't quite understand why it was necessary to  
15 file those motions, but I just wonder if all that could be  
16 worked out with a stipulation.

17 UNIDENTIFIED COUNSEL: We can talk after we get done  
18 here. I mean I think it would probably be up to the defense  
19 to enter into some sort of a stipulation.

20 THE COURT: Wasn't it directed to -- was it directed  
21 to just two parties?

22 UNIDENTIFIED COUNSEL: I don't have it in front of  
23 me, so I don't want to --

24 THE COURT: Okay.

25 UNIDENTIFIED COUNSEL: I don't want to make it up.

Colloquy

34

1 THE COURT: You know what I'm talking about, Mr.  
2 Goldberg?

3 MR. GOLDBERG: I do, but we certainly will work this  
4 out.

5 THE COURT: Okay. All right. Last issue is the  
6 custodian meet and confer process. I think the Court's hope  
7 was that over the next couple of hours there could be a meet  
8 and confer process between the different defendants and the  
9 plaintiffs. And when we come back at 2:00, hopefully we'll  
10 have a better idea of what the disputes are and how we can  
11 foster a process to get this teed up in an efficient fashion.

12 If the Court can help, we're here. We're here all  
13 day. And -- but I'm really looking to, you know, counsel to  
14 help us help you. What can we do to help foster this process?  
15 Mr. Slater, if there are key discreet documents that would be  
16 helpful to be produced, let us know. If -- you know, we're  
17 open to any ideas to move the process along.

18 I do think you ought to start discussing the  
19 translation issue and not save it for the eleventh hour  
20 because that looks like it's going to be a problematic issue  
21 in the case.

22 So for the time being, for the good of the order,  
23 are there any other issues or matters we should address? From  
24 plaintiffs? I don't hear anything. Defendants? Okay. We'll  
25 adjourn and we'll come back at 2:00.

1 THE CLERK: All rise.

2 (Court adjourned)

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5 C E R T I F I C A T I O N

6 I, Roxanne Galanti, court approved transcriber,  
7 certify that the foregoing is a correct transcript from the  
8 official electronic sound recording of the proceedings in the  
9 above-entitled matter.

10

11

12 \_\_\_\_\_ October 25, 2019

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